A **NME SERVICES SDN BHD**

v.

TETUAN SP CHANRA

B HIGH COURT MALAYA, KUALA LUMPUR
SM KOMATHY SUPPIAH JC
[CIVIL SUIT NO: 22NCVC-158-04-2014]
21 JULY 2014

C ***CIVIL PROCEDURE:*** *Summary judgment - Application for - Recovery of sum held by solicitors - Whether solicitors' refusal to release monies a breach in its stakeholder's duties - Whether solicitors under obligation to release monies upon disposal of appeal - Whether solicitors had broken fundamental rule of practice in refusing to release monies as* D *per terms of stakeholding - Triable issues - Whether arose - Whether application for summary judgment allowed - Rules of Court 2012, O. 14*

LEGAL PROFESSION: *Solicitors - Stakeholders - Recovery of sum held by solicitors - Whether solicitors' refusal to release monies a breach in its stakeholder duties - Whether solicitors under an obligation to release* E *monies upon disposal of appeal - Whether solicitors had broken fundamental rule of practice in refusing to release monies as per terms of stakeholding - Triable issues - Whether arose - Whether application for summary judgment allowed - Rules of Court 2012, O. 14*

F This was an action brought by the plaintiff to recover a sum of RM1,256,102.90 held by the defendant, a firm of advocates and solicitors. The monies had been paid to the defendant as a stakeholder pursuant to a consent order entered between the plaintiff and the former's clients, Anjung Bahasa Sdn Bhd ('ABSB') G and one Chua Sin Han ('Chua'). The defendant was required to hold the monies until the resolution of an appeal in the Court of Appeal. The defendant had refused to release the monies despite the disposal of the appeal by the Court of Appeal. By a notice of application, the plaintiff applied for summary judgment against the H defendant firm pursuant to O. 14 of the Rules of Court 2012 ('ROC'). The claim was premised on the assertion that the defendant had breached its stakeholder's duties in refusing to release the monies despite the resolution of the appeal. In resisting the application, the defendant contended that there were triable I issues (i) whether the consent order could be enforced against it when it was not made a party to it; (ii) if so, whether it was under any obligation to release the monies to the plaintiff's

solicitors in the absence of any express provision in the consent order requiring it to do so; and (iii) whether there was consideration for the terms recorded in the consent order. The plaintiff, however, argued that pursuant to the terms of the consent order, it was plain and clear that the defendant was required to release the monies upon the disposal of the appeal by the Court of Appeal. The defendant firm therefore had no defence to the claim.

Held (allowing application; entering final judgment for plaintiff):

(1) The defendant had acknowledged that it was required to release the stakeholder sum upon the resolution of the appeal by the Court of Appeal *via* a letter where the defendant declined to release the monies and explained its refusal and *via* the defendant's written explanation made in response to a complaint made by the plaintiff against it to the Bar Council. The defendant, in the face of these letters, could not do a volte face and now say that it was under no obligation to release the monies upon the disposal of the appeal. There was clear and unequivocal admission that the defendant had received the monies as stakeholder and that it was only permitted to hold it 'until the appeal in the Court of Appeal was resolved'. (para 23)

(2) As for the defendant's contention that there was a triable issue in respect of whether the plaintiff gave consideration for ABSB and Chua depositing the judgment sum with the defendant, there was no merit in the argument, which was premised on the fact that there was no mention in the consent order for the reason ABSB and Chua had deposited the judgment sum. There was no reference to the application for stay of execution of the judgment in the consent order. In the result, on the face of the consent order, there was no consideration for ABSB and Chua to deposit the monies with the defendant. This argument was fundamentally flawed as there was no requirement in law for this fact to be mentioned on the face of the consent order. It was indisputable on the evidence that the plaintiff had only agreed to stay execution on the judgment on account of ABSB and Chua consenting to deposit the judgment sum with the defendant. (para 24)

(3) The defendant's argument that there was no term in the consent order for the accrued interest to be paid to the plaintiff failed *in limine* in light of r. 14.10 of the Rules and Rulings of the Bar Council and r. 2 of the Solicitors Accounts (Deposit Interest) Rules 1990 which was binding on the defendant. (paras 25 & 26)

(4) There was no suggestion by the defendant that the terms of the consent order as drawn up were inaccurate or wrong. Indeed, neither the defendant nor its clients ever disputed the terms of the consent order. The plaintiff had agreed to a conditional stay subject to the monies being deposited with the defendant. As the plaintiff had performed its part of the agreement by not executing on the judgment until the disposal of the appeal, it was not permissible for the defendant to hold on to the monies any longer. (para 28)

(5) The defendant had broken a fundamental rule of a solicitor's practice in refusing to release the monies as per the terms of the stakeholding. The defendant had failed to demonstrate that it had a real *bona fide* defence to the plaintiff's claim for the release of the monies held by it as a stakeholder. The issues which the defendant had adumbrated were unsupported by contemporaneous correspondence. (paras 30, 31 & 32)

Case(s) referred to:

Banque de Paris et des Pays-Bas (Suisse) SA v. Costa de Naray and Christopher John Walters [1984] 1 Lloyd's Rep 21 ***(refd)***

Binder v. Alachouzos [1972] 2 All ER 189 ***(refd)***

Cempaka Finance Bhd v. Ho Lai Ying & Anor [2006] 3 CLJ 544 FC ***(refd)***

Datuk M Kayveas & Anor v. Bar Council [2013] 7 CLJ 533 FC ***(refd)***

Microsoft Corporation v. Electro-Wide Limited [1997] FSR 580 ***(refd)***

Nasir Kenzin & Tan v. Elegant Group Sdn Bhd [2009] 1 CLJ 47 CA ***(refd)***

National Company for Foreign Trade v. Kayu Raya Sdn Bhd [1984] 2 CLJ 220; [1984] 1 CLJ (Rep) 283 FC ***(refd)***

OCBC Bank (Malaysia) Bhd v. Lee Lee Fah & Ors & Another Appeal [2000] 1 CLJ 71 CA ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 14

Solicitors Accounts (Deposit Interest) Rules 1990, r. 2

For the plaintiff - M Vinoben; M/s Raja Darryl & Loh

For the defendant - Yee Wei Kong; M/s Wan Chin & Co

Reported by Suhainah Wahiduddin

JUDGMENT

SM Komathy Suppiah JC:

[1] This is an action brought by the plaintiff to recover a sum of RM1,256,102.90 held by the defendant, a firm of advocates and solicitors. The monies had been paid to the defendant as a stakeholder pursuant to a consent order entered between the plaintiff and the former's clients. The defendant was required to hold the monies until the resolution of an appeal in the Court of Appeal. The defendant has refused to release the monies despite the disposal of the appeal by the Court of Appeal.

[2] By a notice of application dated 12 May 2014, the plaintiff applied for summary judgment against the defendant firm pursuant to O. 14 of the Rules of Court, 2012 ("ROC"). The claim is premised on the assertion that the defendant firm had breached its stakeholder's duties in refusing to release the monies despite the resolution of the appeal.

Background Facts

[3] In outline the factual background can be briefly stated. Sometime in 2009, the plaintiff commenced a civil action in the Kuala Lumpur High Court against one Anjung Bahasa Sdn Bhd ("ABSB") and one Chua Sin Han ("Chua") *inter alia* for the recovery of the sum of RM1,256,102.90.

[4] On 14 October 2010, the High Court, entered summary judgment against ABSB and Chua for the sum of RM1,256,102.90 from 1 July 2007 till date of realisation and costs of RM3,000. On 15 November 2010, ABSB and Chua appealed against the decision to the Court of Appeal. Pending the hearing of their appeal, ABSB and Chua filed an application for a stay of execution of the judgment of the High Court. The defendant firm were their solicitors.

[5] On 19 October 2011, the following consent order was entered in the High Court as:

(i) That the judgment sum, interest and costs, calculated up to 19 October 2011 be paid to the defendants solicitors firm to be held as stakeholders pending the full and final disposal of the defendant's appeal to the Court of Appeal;

(ii) That the sum is to be deposited into an interest bearing fixed deposit account;

(iii) That the sum is to be paid to the plaintiff's solicitors in the event ABSB and CSH's appeal is decided in the plaintiff's favour; and

(iv) That the payment to the plaintiff's solicitors is to be effected within 14 days of the order of the Court of Appeal.

[6] ABSB and Chua's appeal was dismissed by the Court of Appeal on 5 November 2012. ABSB and Chua then filed a motion, each in the Federal Court and in the Court of Appeal. The motion in the Federal Court was for leave to appeal to the Federal Court against the dismissal of their appeal by the Court of Appeal and the motion in the Court of Appeal was for review of the decision of the Court of Appeal in dismissing their appeal.

[7] On 3 March 2014, the Federal Court dismissed ABSB and Chua's leave application with costs of RM10,000. About a month later, the Court of Appeal dismissed their review application with costs of RM10,000. Consequent to the dismissal, the plaintiff's solicitors wrote to the defendant's firm on 7 November 2012, 10 December 2012, 7 January 2013 and 5 March 2014, requesting for the release of the stakeholders sum of RM1,691,890.56 together with the interest accrued thereon on the fix deposit interest bearing account. The defendant refused to pay the sum claimed. Hence, this suit.

Arguments Of Parties

[8] In resisting the application, the defendant contended that there were triable issues. These were identified as below:

(i) Whether the consent order can be enforced against it when it was not made a party to it?;

(ii) If so, whether it is under any obligation to release the monies to the plaintiff's solicitors in the absence of any express provision in the consent order requiring it to do so?; and

(iii) Whether there is consideration for the terms recorded in the consent order?

[9] The plaintiff disputed that the issues raised by the defendant constituted triable issues. It was argued that pursuant to the terms of the consent order, it was plain and clear that the defendant was required to release the monies upon the disposal of the appeal by the Court of Appeal. The defendant firm therefore had no defence to the claim.

[10] Before moving on to address these arguments, I shall deal with the law on the subject of liability of a stakeholder.

The Law On The Liability Of A Stakeholder

[11] The position of a stakeholder has been considered in numerous cases. It is sufficient for present purposes to refer to three of these cases. In *OCBC Bank (Malaysia) Bhd v. Lee Lee Fah & Ors & Another Appeal* [2000] 1 CLJ 71; [2000] 1 MLJ 134, Siti Norma Yaakob JCA set out the pertinent law succinctly and comprehensively as follows:

> What then, in law is the essence of a stakeholding? That question was asked and answered in the case of *Toh Theam Hock v. Kemajuan Perwira Management Corp Sdn Bhd* [1988] 1 MLJ 116 where the then Supreme Court held that the word 'stake' is in common parlance used to apply to any money to be disposed of in accordance with what may happen in future: and whoever is in possession of the money is often described as a stakeholder. The manner in which the money is to be disposed of depends on the terms on which it is held.
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> I next ask what is the liability of a stakeholder? That question was also asked and answered by Lord Denning MR in his dissenting judgment in the case of *Burt v. Claude Cousins & Co Ltd & Another* [1971] 2 QB 426 at p 435 as follows:
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> > If an estate agent or a solicitor, being duly authorised in that behalf, receives a deposit 'as stakeholder', he is under a duty to hold it *in medio* pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the event. (at 143)

[12] In *Nasir Kenzin & Tan v. Elegant Group Sdn Bhd* [2009] 1 CLJ 47, the Court of Appeal dismissed an appeal brought by a firm of solicitors against the order of the High Court entering summary judgement against them in a suit brought by a company for an order, *inter alia*, that the firm of solicitors do pay to them the sum of RM1 million, being money held by the firm as stakeholder's money together with accrued interest. In delivering the judgment of the Court of Appeal, Suriyadi Halim Omar JCA observed:

> [4] ... The respondent's claim against the appellant was simple and straight forward. All it wanted was the sum of money pursuant to the undertaking, which the appellant had failed to pay up, despite a request having been made for it.

A …

[13]…the impugned undertaking is a promise or security given in the course of the arrangement, which binds the appellant in law, for obtaining some concession from the respondent. All the respondent had to do was hand over RM1 million to the appellant
B as stakeholder's money of which they did. The promise required of the appellant was the return of that stakeholder sum to the respondent, in the event something shall happen, or that something shall not happen, leading to the abortion or termination of the transaction of buying the shares of the company.

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[14] The capacity of the appellant when giving that undertaking was one of a professional ie, in the capacity of a solicitor, worthy enough to be entrusted with such a large sum of money. As a solicitor the appellant is also an officer of the court. In light of an honourable background, from which oozed the trust, matched by
D the undertaking, the payment of RM1 million must have been made pursuant to those factors.

[15] The seriousness of an undertaking cannot be underestimated, especially one given by a member of the legal profession, and unless compelled to honour the undertaking, public confidence and
E trust on the legal profession will whittle away. Courts take it so seriously that a person may be cited for contempt if an undertaking made to it is breached.

[13] Finally, we have the recent decision of the Federal Court in
F *Datuk M Kayveas & Anor v. Bar Council* [2013] 7 CLJ 533; [2013] 5 MLJ 640 where most, if not all, of the relevant authorities were discussed and elucidated. Jeffrey Tan FCJ said (at para. 31 (CLJ & MLJ):

In our system of conveyancing, 'the word 'stake' is in common
G parlance used to apply to any money to be disposed of in accordance with what may happen in future: and whoever is in possession of the money is often described as a stakeholder. The manner in which the money is to be disposed of depends on the terms on which it is held' (*Toh Theam Hock v. Kemajuan Perwira*
H *Management Corporation Sdn Bhd* [1988] 1 MLJ 116 per Hashim Yeop A Sani SCJ, as he then was, delivering the judgment of the former Supreme Court). 'Solicitors who hold funds which are paid to them as stakeholders hold those funds as trustees for the client, whose property the funds remains at all times. Such funds are not held in a contractual or quasi-contractual capacity'
I (*Halbury's Laws of England* (4th Ed), Reissue vol 44(1) para 126). '… the obligations arising under a solicitor's undertaking go beyond contractual effect. They are obligations which a solicitor

has a professional duty, as well as a contractual duty, to observe' (*Bentley and another v. Gaisford and another* [1997] 1 All ER 842, at p 848 per Sir Richard Scott V-C). When solicitors hold funds as stakeholders, they hold those funds as trustees and not in a contractual or quasi-contractual capacity (see *Alimand Computer Systems Ltd v. Radcliffes & Co*, (1991) Times, 6 November, QBD). 'If an estate agent or solicitor, being duly authorised in that behalf, receives a deposit 'as stakeholder', he is under a duty to hold it *in medio* pending the outcome of a future event. He does not hold it as agent for the vendor, nor as agent for the purchaser. He holds it as trustee for both to await the evidence: see *Skinner v. The Trustee of Property of Reed and Others* [1967] 2 All ER 1286 at p 1287; [1967] Ch 1194 at p 1200) per Cross J. Until the event is known, it is his duty to keep it in his own hands; or to put it on deposit at the bank …' (*Burt v. Claude Cousins & Co Ltd* [1971] 2 QB 426 per Lord Denning MR in his dissenting judgment, which statement of the law was accepted by the House of Lords in *Sorrell v. Finch* [1977] AC 728, and referred in *Kuldip Singh v. Lembaga Letrik Negara & Anor, Dato Seri Au Ba Chi v. Malayan United Finance Bhd & Anor* and *OCBC Bank (Malaysia) Bhd v. Lee Lee Fah & Ors and another appeal*, amongst others). 'Once a solicitor holds money in trust for his client or any other party for a purpose, it does not matter whether the amount is sufficient to be utilised for that purpose. The money remains to be in trust' (*Selvaratnam a/l Vellupillai v. Dr Jayabalan Karrupiah* [2009] 1 MLJ 794 per Zaki Azmi CJ, delivering the majority judgment of the court). Therefore, it is beyond argument that a stakeholder is a trustee and that the breach of a stakeholding term is not just a breach of undertaking but also a breach of trust.

[14] Based on the foregoing, it is clear that the proposition that a stakeholder is a trustee and legally bound to pay the monies held by him in accordance with the terms in which the monies is held as stakeholder should be regarded as settled.

The Law On Summary Judgment

[15] Before I address the defendant's purported defences to the plaintiff's claim, it is apposite to first consider the law on summary judgment applications under O. 14 of the principles relating to a summary judgment application under O. 14 of the ROC are well settled. In order to obtain judgment, a plaintiff first has to show that he has a *prima facie* case for judgment. Once shown, the burden shifts to the defendant who, in order to obtain leave to defend, has to establish that there is a fair or reasonable

probability that he had a real or *bona fide* defence. See *National Company for Foreign Trade v. Kayu Raya Sdn Bhd* [1984] 2 CLJ 220; [1984] 1 CLJ (Rep) 283; [1984] 2 MLJ 300.

[16] The principles established in *National Company (supra)* were reaffirmed by the Federal Court in *Cempaka Finance Bhd v. Ho Lai Ying & Anor* [2006] 3 CLJ 544; [2006] 2 MLJ 685. The principles governing a summary judgment application are succinctly expressed by Steve Shim CJ (Sabah & Sarawak) (as he then was) (at 689):

> In an application under O. 14, the burden is on the plaintiff to establish the following conditions: that the defendant must have entered appearance; that the statement of claim must have been served on the defendant; that the affidavit in support must comply with r. 2 of O. 14 in that it must verify the facts on which the claim is based and must state the deponent's belief that there is no defence to the claim (see *Supreme Leasing Sdn Bhd v. Dior Enterprises & Ors* [1990] 2 MLJ 36). Once those conditions are fulfilled, the burden then shifts to the defendant to raise triable issues. The law on this is trite.

[17] It is clear that leave to defend will not be granted based upon "mere assertions" by defendants. *Banque de Paris et des Pays-Bas (Suisse) SA v. Costa de Naray and Christopher John Walters* [1984] 1 Lloyd's Rep 21 at 23. The court must be persuaded that there is a reasonable probability that the defendant has a real or *bona fide* defence in relation to the issues.

[18] In this regard, the standard to be applied is well-articulated by Laddie J in *Microsoft Corporation v. Electro-Wide Limited* [1997] FSR 580, where he said at 593 to 594 that:

> It is not sufficient just to look at each factual issue one by one and to consider whether it is possible that the defendant's story in relation to that issue is credible. The court must look at the complete account of events put forward by both the plaintiff and the defendants and … look at the whole situation. The mere fact that the defendants support their defence by sworn evidence does not mean that the court is obliged to suspend its critical faculties and accept that evidence as if it was probably accurate. If, having regard to inconsistency with contemporaneous documents, inherent implausibility and other compelling evidence, the defence is not credible, the court must say so. It should not let the filing of evidence which surpasses belief deprive a plaintiff of its entitlement to relief.

[19] With the relevant principles in mind, I turn now to the defences raised by the defendant in its pleadings. A

The Defences

[20] The principal defence relied on by the defendant is that the firm is under no obligation to release the stakeholding sum to the plaintiff's solicitors as there is no provision in the consent order requiring it to do so. The question is whether that is a triable issue on which it ought to have leave to defend. B

[21] It is common ground that by a series of letters dated 7 November 2012, 10 December 2012 and 7 January 2013, the plaintiff's solicitors had sought payment of the monies held by the defendant as a stakeholder upon the disposal of the appeal by the Court of Appeal. The defendant declined to release the monies and explained its refusal in its reply dated 7 November 2012: C D

> We disagree with your contention in the said letters for the following reasons:
>
> (i) As you are aware we have filed and served our client's application for review of the Court of Appeal decision, which application is pending before the Court of Appeal. We are of the view that there is no full and final disposal of the appeal and/or full and final disposal of the appeal could not have taken place unless and until the review of the said appeal is heard and disposed of finally. E F
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> (ii) We have taken the view that there has not been full and final disposal of the appeal due to the pending review. Accordingly, we are still holding the stakeholder amount according to the Order of 19-10-2011 and therefore we have not breached the Order of 19-10-2011 as alleged by you in your earlier letters and the latest letter. G
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> (iii) We also note that in your said letters you have required the accrued interest to be paid as well but reading the Order dated 19-10-2011 and the threat of lodging a complaint with the disciplinary board is clearly unfounded. H

[22] The next piece of critical evidence that needs to be scrutinised is the defendant's written explanation made in response to a complaint made by the plaintiff against it to the Bar Council. At paras. 7.3 to 7.5 the following allegations are made: I

> 7.3 However, the condition for paying out the sum deposited with my firm under the said Consent Order to the Plaintiff's solicitors as stipulated therein, cannot materialise unless and

A until the term stipulated for release of the said deposit monies is satisfied. This has not been satisfied because the parties are still awaiting the full and final decision of the CA Appeal. Although the CA Appeal was heard and dismissed on 5-11-2011, the finality of that order has not set in as yet. This is because the order dated 5-11-2011 is being reviewed by an application for review of that decision which seeks an order to set aside that decision still pending in the proceedings under the CA Appeal.

7.4 In short, the proceeding in the CA Appeal is still awaiting a full and final disposal by reason of the review application filed by my client against the decision of 5-11-2011. This review application came up earlier for hearing in the CA Appeal but was adjourned to a date to be fixed. This review application is yet to be heard by the Court of Appeal.

7.5 The amount held with my firm pursuant to the said Consent Order of 19-10-2011 was in the sum of RM1,688,890-57 ("the Deposit Sum") and I am bound by the terms of the said Consent Order to deal with the Deposit Sum. For the reasons stated in paragraphs 2-7.4 above, I could not release the Deposit Sum until the review application in the Court of Appeal was resolved. Otherwise my firm will be in breach of the terms of the said Consent Order that mandated my firm to hold the Deposit Sum until there was a full and final disposal of the CA Appeal. For this reason, I have through my firm issued the letter dated 8-1-2013 explaining the situation and stating that my firm has not breached the said Consent Order.

[23] The written responses of the defendant are plainly at variance with the position taken by the defendant in its defence. In my view, the two letters I have adverted to in the preceding paragraphs put it beyond doubt that the defendant acknowledged that it was required to release the stakeholder sum upon the resolution of the appeal by the Court of Appeal. How then can the defendant, in the face of these letters do a volte-face and now say that it was under no obligation to release the monies upon the disposal of the appeal. The defendant has clearly admitted that it is obliged to release the monies to the plaintiff's solicitors upon the disposal of the appeal. There is clear and unequivocal admission that the defendant had received the monies as stakeholder and that it was only permitted to hold it "until the appeal in the Court of Appeal was resolved".

[24] As for the defendant's contention that there is a triable issue in respect of whether the plaintiff gave consideration for ABSB and Chua depositing the judgment sum with the defendant. I again find no merit in this argument. This argument is premised on the fact that there is no mention in the consent order for the reason ABSB and Chua had deposited the judgment sum with the defendant as stakeholder. There was no reference to the application for stay of execution of the judgment in the consent order. In the result, on the face of the consent order, there was no consideration for ABSB and Chua to deposit the monies with the defendant. This argument is fundamentally flawed as there is no requirement in law for this fact to be mentioned on the face of the consent order. In any event, it is indisputable on the evidence that the plaintiff had only agreed to stay execution on the judgment on account of ABSB and Chua consenting to deposit the judgment sum with the defendant.

[25] The defendant's final argument was that there is no term in the consent order for the accrued interest to be paid to the plaintiff. This issue therefore had to be tried. This allegation was denied by the plaintiff. The defendant's argument fails *in limine* in the light of r. 14.10 of the Rules and Rulings of the Bar Council which is binding on the defendant. Rule 14.10 provides:

> (1) Where an Advocate and Solicitor holds money as a stakeholder (whether or not such money is paid by a client of the Advocate and Solicitor) the Advocate and Solicitor shall pay interest in accordance with the Solicitor's Accounts (Deposit Interest) Rules 1990, to the person to whom the stake money is paid unless otherwise agreed.

[26] The relevant provision in the Solicitors Accounts (Deposit Interest) Rules 1990 is r. 2 which provides:

> (1) When a solicitor holds or receives money for or on account of a client, the solicitor shall:
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> (a) deposit such money separately by way of fixed deposit or any income-bearing deposit account in a financial institution licensed under the Banking and Financial Institution Act 1989 or the Islamic Banking Act 1983, or regulated under any federal law for the time being in force which controls or regulates the operation of such financial institution, repayable on demand in the name of the solicitor or his firm and the name of the client or the matter concerned, and account to the client for any interest or income earned thereon; or

A (b) pay to the client out of his own money the sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited separately by way of fixed deposit in a bank repayable on demand as aforesaid:

B Provided that a solicitor shall not be required so to deposit or to account to a client for interest or to pay interest to a client unless:

(i) the sum of money received by the solicitor exceeds Ringgit 5,000 at the time of receipt; and

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(ii) the instructions to the solicitor at the time of receipt are such that he knows that the sum of money so received will not, within four months thereafter, be either wholly disbursed or reduced to a sum below Ringgit 5,000 and the sum of money so received is not is fact within such

D period so disbursed or reduced.

[27] In the instant matter there is no suggestion by the defendant that the parties had agreed that the interest earned on the monies was not to be paid to the plaintiff. Accordingly, it is unarguable

E that the plaintiff is entitled to the interest.

[28] There is one other matter. It is to be noted that there is no suggestion by the defendant that the terms of the consent order as drawn up are inaccurate or wrong. Indeed, neither the

F defendant nor its clients ever disputed the terms of the consent order. There was a compromise. The plaintiff agreed to a conditional stay subject to the monies being deposited with the defendant. As the plaintiff has performed its part of the agreement by not executing on the judgment until the disposal of the appeal,

G it is not permissible for the defendant to hold on to the monies any longer.

[29] It would be apposite at this juncture to quote what Lord Denning MR expressed in *Binder v. Alachouzos* [1972] 2 All ER

H 189 at p. 192 in discussing the two competing considerations which arose in that case:

> ... it is important that the courts should enforce compromises which are agreed in good faith ... If the court is satisfied that the terms are fair and reasonable, then the compromise should be held

I binding ... Otherwise, there could never be a compromise of such an action. Every case would have to go to court for final determination and decision. That cannot be right.

[30] The issues which the defendant has adumbrated are not *bona fide* and unsupported by contemporaneous correspondence.

Conclusion

[31] The defendant had broken a fundamental rule of a solicitor's practice in refusing to release the monies as per the terms of the stakeholding.

[32] I find that the defendant has failed to demonstrate that it has a real or *bona fide* defence to the plaintiff's claim for the release of the monies held by it as a stakeholder. Consequently, I allow the application and enter final judgment for the plaintiff in the sum of RM1,256,102.90 with interest and costs of RM4,000.